		June 2000				July 2000			
		Verizon Measurements		DTE Measurements		Verizon Measurements		DTE Measurements	
Metric Number	Description	Result	Number of Observations	Result	Number of Observations	Result	Number of Observations	Result	Number of Observations
PR-1-01	Average Interval Offered -- Total No Dispatch	6.56	801	6.56	801	5.96	785	5.96	785
PR-1-02	Average Interval Offered -- Total Dispatch	6.96	1422	6.96	1422	6.84	846	6.84	846
PR-2-01	Average Interval Completed -- Total No Dispatch	4.07	151	4.07	151	3.79	198	3.79	198
PR-2-02	Average Interval Completed -- Total Dispatch	7.16	1193	7.16	1193	7.14	694	7.14	694
PR-4-02	Average Delay Days -- Total	3.57	72	3.57	72	3.44	59	3.44	59
PR-4-03	Percent Missed Appointments -- Customer Reasons	12.53	--	12.53	2027	13.19	--	13.19	1736
PR-4-04	Percent Missed Appointments -- VZ Dispatch	3.55	2027	3.55	2027	3.40	1736	3.40	1736
PR-4-05	Percent Missed Appointments -- VZ No Dispatch	NA	--	NA	--	NA	--	NA	--
PR-4-08	Percent Missed Appointments -- Customer -- Late Order Confirmation	0.20	2027	0.20	2027	0.46	1736	0.46	1736
PR-5-01	Percent Missed Appointments -- VZ -- Facilities	2.71	2027	2.71	2027	2.88	1736	2.88	1736
PR-5-02	Percent of Orders Held for Facilities longer than 15 Days	0.00	2027	0.00	2027	0.00	1736	0.00	1736
PR-5-03	Percent of Orders Held for Facilities longer than 60 Days	0.00	2027	0.00	2027	0.00	1736	0.00	1736
PR-6-01	Percent Installation Troubles Reported within 30 Days	6.20	1838	--*	1838	8.46	1465	--*	1465
PR-6-03	Percent Installation Troubles Reported within 30 Days -- Found OK	9.85	1838	--*	1838	10.92	1465	--*	1465
MR-2-02	Network Trouble Report Rate -- Loop	3.08	9458	3.08	9458	2.77	10723	2.77	10723
MR-2-03	Network Trouble Report Rate -- Central Office	0.50	9458	0.50	9458	0.39	10723	0.39	10723
MR-3-01	Missed Repair Appointment -- Loop	18.90	291	18.90	291	19.19	297	19.19	297
MR-4-01	Mean Time to Repair -- Total	44.92	338	44.92	338	45.37	339	45.37	339
MR-4-02	Mean Time to Repair -- Loop	48.63	291	48.63	291	49.78	297	***49.80***	297
MR-4-03	Mean Time to Repair -- Central Office	21.93	47	21.94	47	14.03	42	14.03	42
MR-4-08	Percent Out of Service longer than 24 Hours	52.94	221	52.94	221	51.05	239	51.05	239
MR-4-09	Mean Time to Repair -- No Double Dispatch	29.32	338	29.32	***235***	27.82	339	***27.83***	***220***
MR-4-10	Mean Time to Repair -- Double Dispatch	81.37	338	***81.38***	***100***	78.47	339	***78.48***	***115***

*--Complete data not available to calculate numerator for Installation Trouble metrics.

APPENDIX B

COVAD COMMUNICATIONS COMPANY
COMMONWEALTH OF MASSACHUSETTS
DTE 98-57 PHASE III

Respondent: Michael Clancy
Title: Director-ILEC Relations
Date: August 11, 2000

REQUEST: Verizon f/k/a Bell Atlantic-Massachusetts, Inc.

ITEM: BA-RR 7 Do you know -- or, if you don't know here, if you can take it as a record request -- when the splitters were ordered for Massachusetts by your company and when they were delivered, and how that time line fits in with the collocation applications?

RESPONSE:

The splitters for Massachusetts were ordered in late May of this year. They were delivered to a Covad warehouse in June of this year. The splitters waited in the warehouse until July 3, 2000, at which time they were shipped to Massachusetts when Covad received the "go-ahead" from Verizon personnel who were installing them.

It is irrelevant "how that time line fits in with the collocation applications." Clearly, the time line for ordering and receiving splitters in May of this year was not representative of the typical time line. After all, every non-ILEC carrier in the country that sought to provide line sharing by June 6, 2000 was ordering splitters at the same time and mostly from the same vendor (Siecor). As a result, Siecor had a shortage of splitters. Covad cannot say that that either the splitter shortage or the time line that it experienced in May and June is representative of the typical ordering process. As Siecor increases production and splitters from different vendors become NEBS compliant, the amount of time that it takes to order and receive splitters should decrease dramatically.

There was no "equipment that was ordered with the intention of provisioning another state but then it was then converted to Massachusetts."

APPENDIX C

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

New England Telephone and Telegraph Company, d/b/a Bell Atlantic-Massachusetts - Section 271 of the Telecommunications Act of 1996 Compliance Filing	D.T.E. 99-271

MOTIONS FOR CLARIFICATION AND RECONSIDERATION OF AT&T COMMUNICATIONS OF NEW ENGLAND, INC. REGARDING VERIZON'S REVISED PERFORMANCE ASSURANCE PLAN

Submitted by:

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September 28, 2000

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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

New England Telephone and Telegraph Company, d/b/a Bell Atlantic-Massachusetts - Section 271 of the Telecommunications Act of 1996 Compliance Filing	D.T.E. 99-271

MOTIONS FOR CLARIFICATION AND RECONSIDERATION OF AT&T COMMUNICATIONS OF NEW ENGLAND, INC. REGARDING VERIZON'S REVISED PERFORMANCE ASSURANCE PLAN

Introduction

On April 25, 2000, Verizon proposed in this docket a performance assurance plan for implementation in Massachusetts ("April 25 PAP"). After one round of initial comment from other participants, the Department of Telecommunications and Energy ("Department") issued an order on September 5, 2000 ("PAP Order" or "September 5 PAP Order"), ordering Verizon to submit and then be subject to a revised performance assurance plan. The Department intended the revisions to bring the Massachusetts plan more into line with an existing performance assurance plan in New York ("New York PAP"). *See* PAP Order, at 22. On September 15, 2000, Verizon filed a revised performance assurance plan ("Revised PAP" or "September 15 PAP") purportedly in compliance with the Department's PAP Order. The Department approved the September 15 PAP on September 22, 2000 ("September 22 Approval Order" or "Approval Order") as being in compliance with its September 5 PAP Order.

AT&T files this document because Verizon's September 15 PAP is not in compliance with the September 5 PAP Order and further does not satisfy more generally the Department's intent to provide at least as much protection for competition in Massachusetts as in New York.

Consequently, the Department should withhold a favorable recommendation on Verizon-MA's Section 271 application at the FCC until the Department receives from Verizon what it ordered and what it intended.

AT&T recognizes that, as a procedural matter, this docket is not an adjudicatory proceeding and that AT&T does not have "procedural rights" in a technical sense. AT&T is not, therefore, seeking to exercise procedural rights or vindicate substantive rights by the filing of the "motions" contained in this document. AT&T recognizes that the Department may lawfully ignore this filing. Nevertheless, AT&T is filing this document because the Department has several interests at stake: (a) a public policy interest in the development of competition in the local exchange market and the minimization of customer disruption; and (b) as the agency responsible for regulating monopoly telecommunications utilities, an interest in seeing that its orders to those utilities are properly interpreted and complied with. Verizon's September 15 PAP compromises both of those interests. This filing (styled as "motions" more as a convention than as a necessity) is intended to explain why.

Motion To Reconsider and Revoke September 22 Order Approving PAP As In Compliance.

AT&T hereby moves that the Department reconsider its September 22 Approval Order. As grounds for AT&T's motion, AT&T states that Verizon's September 15 PAP does not comply with the specific requirements of the Department's PAP Order in that:

a. The benchmark standards in Verizon's September 15 PAP are not consistent with the C2C performance benchmarks, as required by the Department's PAP Order (*id.*, at 27);

b. By altering the –1 offset provision in its September 15 PAP so that it differs from the New York PAP, Verizon has failed to adopt the statistical methodology used in New York, as required by the Department's PAP Order (*id.*, at 28-29);

c. Verizon failed to narrow the waiver provision, as required by the Department's PAP Order (*id.*, at 31); and

d. Verizon failed to include a Massachusetts-specific Change Control Assurance Plan ("CCAP"), as required by the Department's PAP Order (*id.*, at 34-35).

Motion To Modify September 5 PAP Order Due To Verizon Misleading Representations.

AT&T hereby moves that the Department modify its September 5 PAP Order and reconsider its September 22 Approval Order accordingly, because certain aspects of the September 5 Order were based on misleading representations made by Verizon. The modifications to the April 25 PAP that the Department ordered in its September 5 PAP Order do not accomplish the Department's intent of providing the same level of protection for competition that is provided in New York, because the September 5 PAP Order was based on Verizon's misleading representations regarding the differences between the New York PAP and the April 25 PAP. Verizon's April 25 filing purported to identify the differences between the plans but did not – in fact – identify many material differences. Verizon's April 25 filing misled the Department and the participants into believing that there were no other material differences. Had Verizon identified the other differences between the April 25 PAP and the New York PAP, the other participants would have known to propose, and the Department would have known to order, the following additional changes in order to make the Massachusetts and New York PAPs similar:

a. a method for allowing scoring for small sample sizes;

b. a provision granting express authority to the Massachusetts Department to reallocate bill credits;

c. a provision requiring Verizon to issue a check instead of bill credits for CLECs no longer using Verizon's services;

d. a provision making Verizon's performance regarding the Electronic Data Interface subject to penalties under the "Special Provisions" section;

e. a provision making Verizon's performance regarding Resale Flow-through subject to penalties under the "Special Provisions." section.

A copy of the current New York PAP, dated as of April 7, 2000, is attached to this pleading for the Department's convenience.

AT&T recognizes that it was theoretically possible for the other parties and the Department to identify these other differences. AT&T further recognizes that Verizon may contend that it did not intend its list of differences in the April 25 PAP to be exhaustive and that it was unreasonable reliance for the parties to rely on its April 25 PAP for a list of the differences when they could have identified the differences themselves. Such an argument, however, would be beside the point, because this docket is not an adjudication between adversaries, where one adversary can take advantage of the weakness of another. At this point, the Department should be interested in accomplishing the public policy objectives that it intended. Verizon's failure to identify all the material differences when its filing may be fairly read as purporting to do that is misleading at best. If Verizon's misleading (whether deliberate or not) list of the differences resulted in a failure to consider the impact of some of the differences, then the right thing to do is to consider them now. When the Department does consider them, AT&T asks that the Department require them to be added to the Massachusetts plan.

Accordingly, AT&T respectfully requests that the Department revoke its Approval Order and modify its PAP Order to require the five above-listed changes to the September 15 PAP.

Motion To Clarify Certain Ambiguities In The September 5 PAP Order

AT&T also moves for clarification of the Department's September 5 PAP Order. Such a clarification will necessitate changes to the September 15 PAP. As grounds for AT&T's motion, AT&T states that, in Verizon's September 15 PAP, Verizon unilaterally interpreted certain ambiguous provisions of the Department's PAP Order in its favor. The Department should not allow Verizon to determine unilaterally the Department's meaning with respect to ambiguous provisions. An alternative interpretation of those provisions would require the following changes to the September 15 PAP, which AT&T requests that Department order:

a. The "procedural trigger" should be tripped if any of the sub-caps discussed in Section II below are met;

b. The PAP should provide for an initial audit of Verizon's raw data and provide for on-going reviews of raw data; and

c. The PAP as filed on September 15 should be revised to allow for CLEC and Attorney General participation in the annual review.

Motion To Reconsider September 5 PAP Order Regarding the Relationship Between Interconnection Agreement and PAP Remedies

Finally, AT&T moves for reconsideration of the Department's PAP Order and the Approval Order regarding the relationship between the remedies under the interconnection agreements and under the PAP. As grounds for this motion, AT&T states that a decision to make the PAP remedies a substitute for, rather than in addition to, remedies under interconnection agreements substantially undercuts the Department's goal of providing protections that are proportionally the same as those available in New York. If the Department retains the current relationship between interconnection agreement and PAP remedies, the Department should increase the level of PAP remedies to be proportional to the total exposure Verizon faces in New York from both interconnection agreements and the New York PAP.

For the foregoing reasons, and for the further reasons stated below, AT&T respectfully requests that the Department grant these motions.

Argument.

I. VERIZON'S SEPTEMBER 15 PAP FAILS TO COMPLY WITH THE SPECIFIC REQUIREMENTS OF THE DEPARTMENT'S PAP ORDER.

In its revised PAP, Verizon has ignored key portions of the Department's PAP Order. Verizon's so-called compliance filing does not, in fact, comply. At a minimum the Department should require Verizon to comply with the Department's own order.

A. Verizon-MA Ignores The Department's PAP Order To Incorporate Benchmark Standards Consistent With The New York Carrier-to-Carrier Benchmarks.

In its PAP Order, the Department explicitly stated that "[I]f Verizon has reduced any benchmark standards in its Massachusetts PAP, those standards shall be revised to be consistent with the NY Carrier-to-Carrier performance benchmarks." PAP Order at 27. Despite this clear and unambiguous statement, Verizon did not make the ordered revisions.

For example, in its "Special Provisions" Section, Verizon purports to make $13 million dollars in bill credits available for discriminatory hot-cut service. *See* September 15 PAP at 4, 15 & Appendix H, page 3. Specifically, Verizon promises to offer bill credits if it fails in either of two specific hot-cut metrics, PR-4-06 "Missed Appointment - % on Time Performance – Hot Cut" and PR-6-02 "Installation Quality - % Installation Troubles Reported Within 7 Days." *See* September 15 PAP at 15 & Appendix H, page 3. Despite the Department's specific command, however, Verizon has adopted performance standards for these metrics that are below the C2C standards. For PR-4-06, the C2C standard is 95% on time performance. Under Verizon's PAP, however, Verizon is not penalized for its discriminatory behavior unless its on time performance level falls below 90%. *See id.* Similarly, the C2C standard for PR-6-02 is 2% or fewer installation troubles reported within seven days. Under Verizon's PAP, however, Verizon is not penalized for its discriminatory behavior unless there are installation troubles reported within seven days on at least 3% of orders. *See id.*

Verizon also proposes providing "Special Provisions" credits for various UNE Ordering Performance Measures. *See* PAP at 14 & Appendix H, page 1. Specifically, Verizon promises to provide bill credits if it engages in discriminatory behavior in connection with OR-1-04, OR-1-06, OR-2-04, or OR-2-06. Under the C2C metrics, the performance standard for each of these metrics is 95%. Once again, however, instead of adopting the performance level required by the C2C metrics, Verizon adopts a lower performance level (90%) in violation of the Department's PAP Order. *See id*; PAP Order at 27.

B. Verizon Failed To Adopt The Same Statistical Scoring And Bill Credit Methodology ("Statistical Methodology") As Used In The New York PAP.

In its April 25 PAP, Verizon had proposed a statistical methodology that was different from that used in the New York PAP. *See,* April 25 PAP, at 11-12. In its September 5 PAP Order the Department rejected the statistical methodology in the April 25 PAP and ordered Verizon to implement the methodology used in the New York PAP. PAP Order, at 28-29. In its September 15 PAP, however, Verizon did not implement the New York PAP methodology.

In its September 15 PAP, Verizon included a footnote that contains a provision that has a serious impact on the PAP and that is not contained in the New York PAP. In footnote three, Verizon states:

> If there is no activity in the month after a –1 score is recorded that month will be excluded from the determination whether a –1 is converted to a 0 score and the following months in which there is activity will be used to make this determination. If there is no activity for three months in a row after a –1 score has been recorded, the –1 will be converted into a 0 score.

September 15 PAP, at 9, n.3.

This addition, hidden in a footnote, has a dramatic impact on the PAP. In New York, if Verizon receives a score of –1 for an MOE measure in one month and Verizon does not receive a score of 0 in each of the next two months (either because it receives a score of –1 or –2, *or because there is no activity in that particular measure for the month*), then the score remains a -1 for reporting and penalty purposes. Under the September 15 PAP, however, if Verizon receives a score of –1 in a measure for one month and there is no activity (for example, if CLECs decide not to install additional Verizon services in a particular month because of Verizon's discriminatory performance in the previous month) for that measure in the next month, Verizon can still have the –1 score adjusted to a 0 if it scores a 0 in the two months after the month for which there was no activity. If there is no activity for the three months following the –1 score, then the –1 score is automatically changed to 0. This is also different from the New York PAP. These differences are explained in more detail in Attachment A. Thus, while the New York PAP has a limited opportunity for Verizon to "earn" back an offset to bill credits with good, actual performance, the September 15 PAP in Massachusetts relieves Verizon of bill credit obligations when Verizon does nothing in the following months.

This newly added provision is also inconsistent with the bill credit payment schedule that Verizon has proposed in its September 15 PAP. In the Department's September 5 PAP Order, the Department ordered Verizon to provide bill credits under the PAP in the same time frame that it is required to provided bill credits under the Consolidated Arbitrations. *See,* PAP Order, at 30-31. In its September 15 PAP, Verizon explained that this was not possible because of the offset provision by which –1 scores could be reduced to 0 scores. *See,* September 15 PAP, at 17. According to Verizon, this provision requires Verizon to hold off on bill credits until the end of the second month after the close of the month under review. *See, id.*

At first glance, this explanation might appear reasonable. The addition of footnote three to the PAP, however, renders this explanation to be entirely inaccurate. Under the new system, created by footnote three of the September 15 PAP, Verizon will not be able to determine the amount due under the PAP until at least the fourth month after the month under review and in some instances not until at least eighth month after the month under review. *See* Attachment A. Thus, due to the addition of footnote three, Verizon's claim that it will be able to provide bill credits after the close of the second month after the month under review is patently false. Attachment A demonstrates this in more detail.

Because this new offset provision is inconsistent with the Department's intent, with the provisions of the New York PAP and with Verizon's own proposal for the timing of its bill credit payments, the Department should reconsider and revoke its Approval Order and require Verizon to implement the same requirement to "earn" back the billing credit offset that is imposed under the New York PAP.

C. Verizon Failed To Narrow The Waiver Provision, As Required In The Department's PAP Order.

In its September 5 PAP Order, the Department directed Verizon to either strike the PAP provision that allowed Verizon to seek a waiver for "unusual" or "inappropriate" CLEC behavior, or propose a more narrowly defined provision in its compliance filing. *See,* PAP Order, at 31. The Department based its decision on its belief that the FCC had sent "a signal to states that future PAPs either should not contain such a provision or should have a more narrowly defined provision." *Id.*

Verizon's September 15 PAP, however, neither strikes the waiver provision nor proposes a more narrowly defined provision. Instead, Verizon merely provides examples of CLEC behavior that may entitle Verizon to a waiver. *See,* September 15 PAP, at 19-20. Notably, Verizon makes no claim that the waiver provision is in any way limited to the enumerated examples of CLEC behavior, or even to behavior that is similar to the enumerated examples. *See, id.* In no way is this a "more narrowly defined provision," as required by the Department Order. *See,* September 5 PAP Order, at 31. Because Verizon's September 15 PAP does not comply with either the letter or the spirit of the Department's Order, the Department should reconsider and revoke the September 22 Approval Order.

D. Verizon-MA Ignores The Requirement In The Department's PAP Order To Incorporate A Massachusetts-Specific Change Control Assurance Plan.

The CCAP attached as Appendix I to Verizon's September 15 PAP is inadequate to ensure non-discriminatory performance on the part of Verizon in the area of change control procedures. In its PAP Order, the Department instructed Verizon to create a separate Massachusetts-specific CCAP. *See* PAP Order at 34-35. The Department also set out $5.28 million as the appropriate amount of liability that Verizon should face under the CCAP. *See* PAP Order at 35. Instead of submitting a Massachusetts-specific CCAP, however, Verizon merely attached what appears to be the exact CCAP that it had submitted in New York. *See* September 15 PAP, Appendix I. Indeed, Appendix I is even entitled "Change Control Assurance Plan Bell Atlantic – New York" and fails to contain even a single reference to Massachusetts. *Id.* Under the CCAP that Verizon filed in Massachusetts, Verizon must pay *New York* CLECs for non-compliance.

Furthermore, Appendix I discusses the availability of $25 million in bill credits under the CCAP. *See, e.g.*, Appendix I, page 2. If Verizon is suggesting its willingness to make $25 million available under the Massachusetts CCAP, AT&T applauds this as a positive first step in the long journey that Verizon must undertake to fix its abysmal change control performance. Indeed, Verizon's struggles with change control were even noted by KPMG. *See* Comments by

AT&T Regarding the July 26, 2000, Draft of KPMG's OSS Evaluation Report, D.T.E. 99-271 (August 3, 2000) at 26-33.

In summary, the September 15 PAP does not on its face comply with the Department's PAP Order because Verizon has not implemented the CCAP that the Department ordered in the PAP Order. The Department should reconsider and revoke its September 22 Approval Order and withhold any positive recommendation in connection with Verizon's FCC application until such time as Verizon complies with the Department's PAP Order.

II. VERIZON'S APRIL 25 PAP FILING MISREPRESENTED THE WAYS IN WHICH THE APRIL 25 PAP AND THE NEW YORK PAP DIFFER, WITH THE RESULT THAT THE DEPARTMENT DID NOT IDENTIFY ALL THE MODIFICATIONS REQUIRED FOR THE MASSACHUSETTS PAP TO PROVIDE AT LEAST THE SAME LEVEL OF PROTECTION FOR COMPETITION AS THE NEW YORK PAP DOES.

In its April 25 PAP, under a Section entitled "Massachusetts Specific Modifications," Verizon opened with the following paragraph:

> As outlined above, the proposed Massachusetts PAP is structured and based on the New York PAP. BA-MA's proposal includes *only a select few differences* to reflect Massachusetts-specific conditions and to provide additional incentives to provide excellent service. *The following highlights those differences.*

April 25 PAP, at 7-8 (emphasis supplied). Verizon then purported to set out all of the differences between the New York and Massachusetts PAP. According to Verizon, the differences between the two plans were:

1. A difference in the statistical methodology purportedly designed to strengthen and simplify the Massachusetts PAP;
2. A change from payment of bill credits on a monthly basis to payment of bill credits on a quarterly basis;
3. A change from the New York system that allowed CLECs to recover under both the PAP and Interconnection Agreements ("ICAs") to a system where a CLEC could only recover under one of the two;

4. The elimination of a Wholesale Quality Assurance Program ("WQAP");

5. A change from a mandatory annual audit to a system whereby an audit would only take place if the Department determined it to be necessary; and

6. A clarification of the waiver provisions to clearly identify work stoppage as a ground for filing a waiver.

Since April 25, numerous CLECs, Verizon, and the Department have used this list of six differences between the April 25 PAP and the New York PAP as the basis for determining whether the April 25 PAP would be appropriate in Massachusetts. *See, e.g.*, Hearing Officer's Memorandum Requesting Reply Comments, 99-271, May 10, 2000 ("Please comment upon the Massachusetts-specific modifications proposed by Bell Atlantic to the PAP in effect in New York."). The Department's review of the Verizon PAP was explicitly focused on the effect that these six differences would have on Massachusetts. *See id.*

At the same time, the Department made clear that the differences between the Massachusetts and New York PAPs were important, because the Department could have confidence in a plan to the extent that it resembled a plan that had already been approved by the FCC. Specifically, the Department stated:

> The Verizon Plan is based on an established model that has found favor with both state and federal regulators. As noted above, Verizon's proposed PAP is very closely modeled after the PAP that the NYPSC approved for Verizon in New York and which the FCC found reasonable to prevent backsliding once Verizon entered the long-distance market in New York. More importantly, the Verizon model appears to working well in practice, as demonstrated by its effectiveness since January 2000 in responding to backsliding in New York.

PAP Order, at 23 (footnote omitted). Moreover, in a later footnote, although the Department noted that the FCC allowed a range of reasonableness for performance assurance plans, the Department clearly did not find it necessary to analyze the Massachusetts proposal to the extent that it otherwise would have, because of its belief that the Massachusetts plan differed from the New York plan in only the six specified ways. The Department stated,

> It is not necessary for us to analyze the PAP in detail relative to each FCC criterion since that ground has already been covered by the FCC in finding favor with Verizon-NY's PAP.

Id., at 23, no. 17.

It has become apparent, however, that this list of six differences that Verizon claimed were the only differences between the New York PAP and the April 25 PAP is far from complete. Not surprisingly, the undisclosed differences serve to weaken significantly Verizon's incentive to provide non-discriminatory service to the CLECs. Because the Department's evaluation of Verizon's PAP was based on Verizon's misleading representation that the only differences between the New York PAP and the April 25 PAP are those listed above, the Department should reconsider its decision to adopt Verizon's PAP.

A. Verizon's Omissions Of The Differences Between The April 25 PAP And NY PAP Are Material.

1. Verizon Has Added A New Provision That Eliminates Scoring For Any Measurement With A Sample Size Of Less Than Ten.

In both its April 25 and September 15 PAP filings, Verizon has affirmatively added a sentence in Appendix D that dramatically alters the PAP and radically distinguishes it from its New York counterpart. Appendix D states that, "[I]f the performance for the CLEC is better than Verizon-MA's performance *or the sample size is less than 10*, no statistical analysis is required." *See,* April 25 PAP, at Appendix D, p. 2; September 15 PAP at Appendix D, p. 2 (emphasis added). The same sentence in the New York PAP states "[I]f the performance for the CLEC is better than the BA-NY performance, no statistical analysis is needed." *See* NY PAP at Appendix D, p. 2. Despite the fact that Verizon made a very clear choice to add the phrase "or the sample size is less than 10," Verizon makes no mention of this change anywhere in the list of differences between the New York and Massachusetts PAP that it provided in its April 25, 2000, PAP filing. *See* April 25 PAP at 7-8.

The addition of this language to the Massachusetts PAP is not some mere academic distinction without a difference. Rather, this new language seeks to exclude large areas of measured performance from penalty consequences. This language serves to reduce Verizon's liability for discriminatory treatment. Instead of admitting to this change and advocating for it openly, however, Verizon buried it in a sentence in an appendix and made no mention of it otherwise. *See,* April 25 PAP, at 7-8. Because the Department and the participants based their respective evaluations of the PAP on Verizon's misleading list of differences, the sample size difference was not identified and ordered correctly. It should be now.

2. The New York PAP Contains A Provision For The Reallocation Of Bill Credits That The Massachusetts PAP Does Not Contain.

The New York PAP gave the New York Public Service Commission ("NYPSC") "the authority to reallocate the monthly distribution of bill credits between and among any provisions of the Plan and the Change Control Assurance Plan." *See,* New York PAP, at 5. Specifically, the New York PAP stated that $218 million from Mode of Entry, Critical Measures, Special Provisions, and the CCAP are "available for shifting to areas deemed critical during the course of a year." *See id.* This provision is a critical part of the New York PAP, because it gives the NYPSC flexibility to address areas of performance that may need extra attention. For example, if Verizon-NY consistently engages in discriminatory behavior in the UNE MOE, the NYPSC has the explicit authority to increase the monthly liability Verizon faces under the UNE MOE by shifting some of the dollars available under another MOE to UNEs. This allows the NYPSC to isolate and improve trouble areas in New York.